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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ROBERTO VERTHELTYI, on behalf of himself and all others similarly situated,	)	No. 2:24-cv-05028-MWF-JC
	)	
	)	<u>CLASS ACTION</u>
	)	
Plaintiff,	)	<b>PLAINTIFF'S REQUEST FOR</b>
	)	<b>JUDICIAL NOTICE IN</b>
v.	)	<b>SUPPORT OF OPPOSITION</b>
	)	<b>TO DEFENDANTS' MOTIONS</b>
PennyMac Mortgage Investment Trust and PNMAC Capital Management, LLC,	)	<b>TO DISMISS</b>
	)	
	)	Date: November 18, 2024
	)	Time: 10:00 a.m.
Defendants.	)	Ctrm: 5A
	)	Judge: Michael W. Fitzgerald
	)	
	)	
	)	

[No. 2:24-cv-05028-MWF-JC] PLAINTIFF'S REQUEST FOR JUDICIAL  
NOTICE IN SUPPORT OF OPPOSITION TO DEFENDANTS' MOTIONS  
TO DISMISS

**I. INTRODUCTION**

Pursuant to Rule 201 of the Federal Rules of Evidence, and in connection with Plaintiff Roberto Verthelyi's ("Plaintiff") Opposition to Defendants PennyMac Mortgage Investment Trust's ("the Trust") and PNMAC Capital Management, LLC's ("PCM") (together, "PennyMac" or "Defendants") Motions to Dismiss Plaintiff's Complaint ("Oppositions") (ECF Nos. 34 & 35).<sup>1</sup> Plaintiff respectfully requests the Court take judicial notice of the following documents attached to the Declaration of Catherine Pratsinakis in Support of Plaintiff's Request for Judicial Notice in Support of Opposition to Defendants' Motions to Dismiss Plaintiff's Complaint ("Pratsinakis Decl."), filed herewith:

Ex. 1. Transcript of Congressional Hearing titled, *The End of LIBOR: Transitioning to an Alternative Interest Rate Calculation for Mortgages, Student Loans, Business Borrowing, and Other Financial Products*, before the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets of the Committee on Financial Services, U.S. House of Representatives, 117<sup>th</sup> Congress, First Session (April 15, 2021);

Ex. 2. Transcript of Congressional Hearing titled, *The LIBOR Transition: Protecting Consumers and Investors*, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, 117<sup>th</sup> Congress, First Session on Examining How the Financial System Can Move on From the LIBOR System (Nov. 2, 2021);

Ex. 3. Congressional Record (House), *Adjustable Interest Rate (LIBOR) Act of 2021*, 167 Cong. Rec. H7479-01 (Dec. 8, 2021);

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<sup>1</sup> All capitalized terms not otherwise defined herein have the same meaning as in Plaintiff's Oppositions.

1 Ex. 4. Excerpted pages from PennyMac Mortgage Investment Trust’s  
2 Annual Report on Form 10-K for the fiscal year ended December  
3 31, 2023 (“2023 Form 10-K”), filed with the U.S. Securities and  
4 Exchange Commission (“SEC”) on February 22, 2024;

5 Ex. 5. Official list of the Trust’s filings from Maryland Department of  
6 Assessments and Taxation Maryland; and

7 Ex. 6. Impac Mortgage Holdings, Inc.’s Articles Supplementary  
8 Designating the Company’s 9.375% Series B Preferred Stock  
9 (“Impac Mortgage Holdings, Inc.’s Articles Supplementary”).

10 For the reasons that follow, the Court should grant Plaintiff’s Request for  
11 Judicial Notice as the documents in question are public records not reasonably  
12 subject to dispute under Federal Rule of Evidence 201(b).

13 For Pratsinakis Decl. Exhibits 1, 2, and 3—legislative history—the Court  
14 should grant Plaintiff’s request for judicial notice because, as public records, they  
15 are not subject to reasonable dispute. Additionally, judicial notice of these  
16 documents is appropriate due to ambiguities raised by Defendants through their  
17 interpretations of key provisions of the statutes and regulations at issue in this  
18 action—interpretations at odds with the allegations of Plaintiff’s Complaint and  
19 those positions asserted in Plaintiff’s Opposition.

20 For Pratsinakis Decl. Exhibits 4, 5, and 6—two SEC filings (Ex. 4 and Ex. 6)  
21 and a corporate document officially filed with the State of Maryland (Exs. 5)—  
22 Defendants concede through their own concurrently-filed request for judicial notice  
23 that these types of documents are proper subjects for judicial notice, leaving no  
24 dispute as to the Court’s ability to consider them. *See* Defendants’ Request for  
25 Judicial Notice in Support of Their Motions to Dismiss Plaintiff’s Complaint  
26 (“Defendants’ RJN” or “Defs.’ RJN”) (ECF 36). Indeed, the documents are public  
27 records filed on government websites and are readily available for download.

**II. ARGUMENT**

A district court may consider matters outside the pleadings when ruling on a Rule 12(b)(6) motion to dismiss if those matters are properly subject to judicial notice. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998-99 (9th Cir. 2018) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)), *subsequent determination*, 805 F. App'x 525 (9th Cir. 2020). “Judicial notice under Rule 201 permits a court to notice an adjudicative fact if it is “not subject to reasonable dispute.” *Id.* at 999 (quoting Fed. R. Evid. 201(b)). “A fact is ‘not subject to reasonable dispute’ if it is ‘generally known,’ or ‘can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.’” *Id.*

**A. The Court May Properly Consider Legislative History**

Plaintiff requests that the Court take judicial notice of Pratsinakis Decl. Exhibits 1, 2, and 3, which are transcripts from Congressional hearings and the Congressional record leading to the enactment of the Adjustable Interest Rate (LIBOR) Act, 12 U.S.C. § 5801 *et seq.* (the “LIBOR Act”), and its implementing regulations, 12 C.F.R. pt. 253 *et seq.* (the “LIBOR Rule”). As this Court has observed, legislative history is an appropriate source for judicial notice since “[t]hese documents are not subject to reasonable dispute because as legislative history they are matters of public record.” *Schroeder v. Envoy Air, Inc.*, No. CV 16-04911-MWF-KS, 2016 WL 11520388, at \*3 (C.D. Cal. Sept. 27, 2016) (citing *Anderson v. Holder*, 673 F.3d 1089, 1103 (9th Cir. 2012) (“Legislative history is properly a subject of judicial notice”)); *Lee v. CarMax Auto Superstores California, LLC*, No. CV137648MWFVBKX, 2015 WL 12662332, at \*2 (C.D. Cal. Apr. 23, 2015) (same).

Here, the parties dispute the meaning and interpretation of key provisions of the LIBOR Act and Rule (both expressly and implicitly), as well as how they should be interpreted. This dispute forms the very basis of Plaintiff’s claims.

1 While both parties maintain that the law clearly and by its express terms  
2 supports their respective positions, the parties' differing interpretations reveal  
3 arguable ambiguities that warrant closer examination of legislative history. In such  
4 cases, "[g]iven the absence of caselaw and the question about the scope of [a  
5 statute's] reach," judicial notice of legislative history is appropriate. *Johnson v.*  
6 *Serenity Transp., Inc.*, No. 15-CV-02004-JSC, 2016 WL 270952, at \*7 n.6 (N.D.  
7 Cal. Jan. 22, 2016); *see also Garcia v. Pacificare of Cal. Inc.*, No. SACV-12-02022-  
8 JVS-RNBx, 2013 WL 12114019, at \*3 (C.D. Cal. Mar. 6, 2013) (granting judicial  
9 notice of legislative history and noting that, while courts generally follow the plain  
10 meaning of a statute, they may look beyond the literal meaning to ensure it aligns  
11 with the statute's purpose, as "intent prevails over the letter, and the letter will, if  
12 possible, be so read as to conform to the spirit of the act"; if ambiguous, courts must  
13 consult legislative history for further guidance) (citation omitted), *aff'd*, 750 F.3d  
14 1113 (9th Cir. 2014); *Pyara v. Sysco Corp.*, No. 2:15-CV-01208-JAM-KJN,  
15 2016 WL 3916339, at \*2 (E.D. Cal. July 20, 2016) ("Moreover, if the legislature's  
16 intent is not clear from its language, a court may take judicial notice of legislative  
17 history . . . ."); *Frieri v. Sysco Corp.*, No. 16-CV-1432 JLS (NLS), 2016 WL  
18 7188282, at \*2 (S.D. Cal. Dec. 12, 2016) (same).

19 Accordingly, the Court should consider Pratsinakis Decl. Exhibits 1, 2, and 3.

20 **B. The Court May Properly Consider the Trust's 2023 Form 10-K**

21 Plaintiff requests that the Court take judicial notice of Pratsinakis Decl.  
22 Exhibit 4, excerpted pages from the Trust's 2023 Form 10-K. Defendants agree that  
23 "[c]ourts may take judicial notice of public records and government documents  
24 available from reliable sources on the Internet such as websites run by governmental  
25 agencies." Defs.' RJN at 1 (citing *Maxon v. Fuller Theological Seminary*, 549 F.  
26 Supp. 3d 1116, 1122 (C.D. Cal. 2020)).

1 Pratsinakis Decl. Exhibit 4, the Trust’s 2023 Form 10-K, is a public record  
2 filed with the SEC and is readily available for download on its official website.  
3 Plaintiff requests judicial notice of Pratsinakis Decl. Exhibit 3 to demonstrate how  
4 Defendants describe their relationship in publicly-filed disclosures with the SEC.  
5 Courts in this Circuit, including this Court, routinely hold that SEC filings are  
6 appropriate for judicial notice. *See Samantha B. v. Am. Int’l Grp., Inc.*, No. CV-20-  
7 8895-MWF-JPRx, 2020 WL 6700174, at \*2 (C.D. Cal. Nov. 12, 2020) (judicially  
8 noticing Annual Report on Form 10-K because it was “not subject to reasonable  
9 dispute”); *In re Ethereummax Inv.*, No. CV-22-00163-MWF-SKx, 2023 WL  
10 6787827, at \*39 (C.D. Cal. June 6, 2023) (“Information on government agency  
11 websites has often been treated as properly subject to judicial notice.”); *In re*  
12 *Twitter, Inc. Sec. Litig.*, 506 F. Supp. 3d 867, at 875 n.1 (N.D. Cal. Dec. 10, 2020)  
13 (citing authorities for proposition that SEC filings are appropriately noticed by the  
14 Court on a motion to dismiss), *aff’d*, 29 F.4th (9th Cir. 2022); *Metzler Inv. GMBH*  
15 *v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1064 n.7 (9th Cir. 2008) (SEC filings  
16 subject to judicial notice); *Dreiling v. Am. Express Co.*, 458 F.3d 942, 946 n.2 (9th  
17 Cir. 2006) (same).

18 Accordingly, the Court should grant Plaintiff’s request for judicial notice of  
19 Pratsinakis Decl. Exhibit 4.

20 **C. The Court May Properly Consider the Trust’s and Impac**  
21 **Mortgage Holdings, Inc.’s Officially Filed Corporate Documents**

22 Plaintiff requests that the Court take judicial notice of Pratsinakis Decl.  
23 Exhibits 5 and 6—an official list of the Trust’s filings from Maryland Department  
24 of Assessments and Taxation (Ex. 5) and a copy of Impac Mortgage Holdings,  
25 Inc.’s Articles Supplementary filed with the SEC (Ex. 6)—to demonstrate that the  
26  
27



1 Trust did not incorporate the Articles at issue into its Declaration of Trust.<sup>2</sup> These  
2 documents are similar in nature to the corporate documents submitted by  
3 Defendants in their Request for Judicial Notice and are responsive to Defendants'  
4 claim that the Declaration of Trust was incorporated by reference into the Articles  
5 Supplementary. *See* Exhibits A-C to the Declaration of Matthew Donald Umhofer  
6 in Support of Defendants' Request for Judicial Notice (ECF 36-2, 36-3, 36-4). As  
7 Defendants acknowledge, "[c]ourts addressing motions to dismiss routinely notice  
8 organizational governance documents from a state's website." Defs.' RJN at 1  
9 (citing *Risto v. Screen Actors Guild - Am. Fed'n of Television & Radio Artists*, No.  
10 2:18-cv-07241-CAS-PLA, 2018 WL 7016345, at \*5 (C.D. Cal. Nov. 6, 2018) and  
11 *Verduzco v. St. Mary's High Sch.*, No. 2:23-cv-02269-KJM-CSK, 2024 WL  
12 3088467, at \*3 (E.D. Cal. June 21, 2024)). Additionally, for the same reasons set  
13 forth above with regard to Exhibit 4, the Trust's 2023 Form 10-K, Exhibit 6 is  
14 judicially noticeable as a public record filed with the SEC and readily available for  
15 download on its official website.

16 Accordingly, the Court should take judicial notice of Pratsinakis Decl.  
17 Exhibits 5 and 6, which are not subject to reasonable dispute.

### 18 **III. CONCLUSION**

19 For the foregoing reasons, Plaintiff respectfully requests that the Court take  
20 judicial notice of Exhibits 1 through 4 for the purposes discussed herein.

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27 <sup>2</sup> *See* Trust's Mem. at 8 n. 6.

1 Dated: October 11, 2024

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